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RUEKJCS/JOINT STAFF WASHDC PRIORITY
RHEHNSC/NSC WASHDC PRIORITY 1494
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C O N F I D E N T I A L SECTION 01 OF 03 ASTANA 001538

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TAGS: [PGOV](#) [PREL](#) [PHUM](#) [KDEM](#) [OSCE](#) [KZ](#)

SUBJECT: KAZAKHSTAN: ZHOVTIS' LEAD LAWYER COMMENTS ON THE CASE

REF: A. ASTANA 1512

[1](#)B. ASTANA 1494

[1](#)C. ASTANA 1487

[1](#)D. ASTANA 1470

[1](#)E. ASTANA 1429

Classified By: Ambassador Richard E. Hoagland: 1.4 (B), (D)

[1](#)1. (C) SUMMARY: Convicted human rights advocate Evgeniy Zhovtis' lead lawyer, Vitaliy Voronov, predicts Zhovtis will not be acquitted at his appeal hearing but that his sentence might be reduced. Voronov said he had been told that "someone high up in the government" had triggered the trial by telling President Nazarbayev that Zhovtis had been drunk when the auto accident happened. Kazakhstan remains hypersensitive to any criticism about the Zhovtis case. To benefit Zhovtis, we recommend that any public statements and private conversations with Kazakhstani government officials hue strictly to advocating a fair and transparent appeals case that fully respects the rule of law. END SUMMARY.

[1](#)2. (SBU) On September 15, the Ambassador met in Almaty with Vitaliy Voronov (strictly protect throughout), the lead lawyer for Evgeniy Zhovtis's legal team and President of the Almaty Legal Corporation. Zhovtis is the internationally respected human rights advocate and director of Kazakhstan's Human Rights Bureau, as well as one of the principal drafters of Kazakhstan's recently released National Human Rights Action Plan 2009-2012. He was convicted on September 3 of the Kazakhstani equivalent of vehicular manslaughter (reftels). Voronov said he had very recently visited Zhovtis in prison where he is in a large cell with one cellmate. Zhovtis is in good spirits and regularly receives his medications and newspapers. He will remain in detention until his appeal, which will probably be heard during the third week of October.

[1](#)3. (SBU) Voronov thanked the Ambassador for the statement the U.S. Embassy released on September 4 and characterized it as "balanced and correct." He also thanked the Ambassador for working quietly with high-level Kazakhstani officials to

express concerns about the way in which the Bakanas court and the local prosecutor had handled the case. Voronov cautioned that it would be inadvisable to "politicize" the case at this time, although it would be appropriate for all interested parties who want to be helpful to Zhovtis and his supporters to continue to express hope that the procedures and ruling of the appeals court will be fair.

SOMETHING HAPPENED

¶4. (C) As they discussed the case in detail, Voronov told the Ambassador that initially, immediately after the accident, the investigation had been conducted fairly and professionally. Zhovtis had provided the investigator with a copy of a written statement from the victim's family that acknowledged Zhovtis had helped them "with financial and moral support" and that requested no charges be brought against him. Subsequently, however, Voronov said, the prosecutor "cheated" Zhovtis by not including the statement in the documentary evidence for the case. Voronov added that Zhovtis, too, had made a "stupid mistake" by not insisting on a receipt for the document. In any case, likely under pressure from the prosecutor, the investigator unexpectedly changed Zhovtis' status from "witness" to "suspect" without notifying him. Further, during the trial, the prosecutor denied that he had ever received a copy of the document from the victim's family requesting that no charges be filed against Zhovtis.

ZHOVTIS HAS MANY HIGH-LEVEL FRIENDS

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¶5. (SBU) Voronov made clear that Zhovtis is widely respected by a number of high government officials. Voronov told the Ambassador that in recent days he had spoken about Zhovtis with State Secretary-Foreign Minister Kanat Saudabayev and several other senior Foreign Ministry officials, all of whom openly expressed respect for Zhovtis.

¶6. (SBU) When shown the latest "News Bulletin" (Special Issue No. 25, 09/14/09), in which Kazakhstan emphasizes the rule of law, from the Embassy of Kazakhstan in Washington, Voronov commented that Ambassador Idrissov, too, is close friends with Zhovtis. He said that Zhovtis is "a very correct person, who has never had a conflict with the President." Asserting Zhovtis is practically the conscience of Kazakhstan and a human symbol of Kazakhstan's democratization, Voronov claimed that no one could wish to silence him, "not Nazarbayev, and not anyone else in the government." Voronov said that, in his opinion, the court case occurred because Zhovtis refused to plead guilty, which would have meant the case would never have gone to court. "But according to the law, he is innocent," Voronov declared and, therefore, Zhovtis was taking a principled stand to prove that he had acted appropriately after the accident. If he had pled guilty, Zhovtis feels he would have lost public credibility and would be unable to continue his work as a human rights' defender.

SO WHO DUNNIT?

¶7. (C) If it's true that "no one wanted to silence Zhovtis," the Ambassador asked Voronov, what, in his view, had really happened to cause the government to file the case that eventually led to Zhovtis' conviction and a harsh, if legal, sentence. Backing off from his earlier statement that no one in the government could have wished to silence Zhovtis, Voronov confided he had met with Presidential Domestic Policy Adviser Yermukhamet Yertysbayev who was outraged by the Zhovtis case. According to Voronov, Yertysbayev said that apparently someone told the president, when Nazarbayev enquired about the case, that Zhovtis had been drunk when the fatal accident happened. Nazarbayev reportedly responded, "OK, in that case, follow the law." When the Ambassador asked who would have done this, Voronov replied it would have

had to have been someone at the "top" of either the Committee for National Security (KNB) or the Presidential Administration -- i.e., KNB Chairman Shabdarbayev or Head of the Presidential Administration Musin. Voronov added, "I am inclined to believe it was most likely the KNB. Maybe it was the Chairman acting on his own."

VORONOV SPECULATES ON WHAT TO EXPECT

18. (C) "There is a significant danger that the appeals court ruling will not be fair, since it is now under pressure," asserted Voronov. "The appeals court will not acquit him. 'They' achieved what 'they' wanted." Voronov said he expects Zhovtis will be given a reduced sentence of up to two years, which he might be allowed to serve under the condition of "deprivation of freedom/limitation of movement." During this period, Zhovtis would be able to continue his human rights work, although he would not be allowed to participate in "public actions." (NOTE: This is somewhat like house arrest in the United States, including the requirement to wear an electronic monitor. However, the term "house arrest" in Kazakhstan means a police officer is required to guard the residence door. END NOTE.) Voronov noted that the provision of deprivation of freedom/limitation of movement exists in Kazakhstani law but has never before been used. Under a sentence of deprivation of movement, Zhovtis might not be able to travel internationally and would need to check in with authorities, possibly as often as once a week. Voronov then speculated further that -- because of domestic

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and international outrage -- the government might include Zhovtis in a possible Independence Day Amnesty in December.

19. (SBU) If, as Voronov expects, the appeals court upholds the first court's verdict, even with a suspended sentence, Zhovtis plans to appeal to the Supreme Court of Kazakhstan, and possibly even to the United Nations Council on Human Rights (UNCHR). Voronov commented, "Zhovtis' case could be the first case in Kazakhstan to reach the UNCHR since Kazakhstan ratified the protocol in November 2008."

110. (SBU) Voronov said the Zhovtis case "unmasks" Kazakhstan and demonstrates "the lack of rule of law and democracy." He noted that Zhovtis had previously, in the course of his work, heard many stories about problems in the legal system, but now he has personal experience. Zhovtis will not be satisfied with a reduced sentence, even one as "relatively" mild as deprivation of freedom/limitation of movement, or even an amnesty, because he believes he is innocent according to the law, and he will maintain that principled stand.

"THAT WOULD BE SEEN AS A PROVOCATION"

110. (C) On September 11, during a meeting on other issues, the Ambassador informed Deputy Foreign Minister Kairat Umarov that the Open Society Institute planned to send prominent U.S. lawyer Scott Horton to Kazakhstan to consult with Zhovtis' legal team. The Ambassador emphasized that this was a private-sector NGO initiative and not in any way sponsored by the U.S. government. He added, "I want to make clear there are no official fingerprints on this," and reiterated the private-sector NGO nature of this initiative. Umarov replied that the Horton visit would be counter-productive and viewed by some as "a provocation."

112. (C) COMMENT: Voronov's version of why the Zhovtis case went to trial might explain Kazakhstan's hypersensitive reaction to international pressure on this issue, a reaction that sharply emphasizes that no one is above the law. If indeed Nazarbayev actually said, "OK ... follow the law," all subsequent talking points would flow from Number One's rather off-hand comment. More interesting to know would be, if in fact it happened as Yertysbayev told Voronov, what Shabdarbayev or Musin had in mind. Silence a human rights critic during Kazakhstan's OSCE chairmanship? Damage

Kazakhstan in the eyes of the West? Both are reportedly hard-core, old-guard, and pro-Moscow. To benefit Zhovtis, we recommend that any public statements and private conversations with Kazakhstani government officials hue strictly to advocating a fair and transparent appeals case that fully respects the rule of law. END COMMENT.
HOAGLAND